UNITED STATES PATENT AND TRADEMARK OFFICE

April 26, 2011

Mr. Erik Pelton
Erik M. Pelton & Associates, PLLC
311 Park Ave.
Suite 1A
Falls Church, VA 22046

RE: ***Freedom of Information Act Request No. F-11-00145***

Dear Mr. Pelton:

This is in response to your letter dated March 29, 2011, in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, copies of:

"all physical and electronic documents that have been prepared by or received by the USPTO in regards to the "Request for Comments: Trademark Litigation Tactics..." existing through the extension date of February 7, 2011.

The United States Patent and Trademark Office (USPTO) identified 788 pages of documents that are responsive to your request. Of those pages, 594 pages are withheld in full pursuant to Exemption (b)(5) of the FOIA. The remaining 194 pages are releasable and are included herein. Please note, however, that some of these pages are redacted pursuant to Exemptions (b)(5) and (b)(6) of the FOIA.

Exemption (b)(5) of the FOIA, 5 U.S.C. 552(b)(5), protects an agency's deliberative process privilege. Mapother v. Dep't of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993). This privilege applies to documents, which reflect "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975), quoting Carl Zeiss Stiftung & Co. v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318, 324 (D.D.C. 1966).

Here, the withheld information consists of the opinions and recommendations regarding proposed agency actions, i.e., antecedent to the adoption of an agency position (Judicial Watch, Inc. v. U.S. Dep't of Commerce, 337 F.Supp.2d 146,172 (D.D.C. 2004), and deliberative, i.e., a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). The

redacted pages consist of internal memoranda that are privileged, and as such, they are not disclosable pursuant to Exemption (b)(5).

Predecisional, deliberative documents "are at the heart of Exemption (b)(5), and sanctioning release of such material would almost certainly have *a chilling effect* on candid expression of views by subordinates [within an agency]." Schell v. Dep't of HHS, 843 F.2d 933, 942 (6th Cir. 1988) (emphasis added). In particular, disclosure of documents reflecting the positions discussed, but not ultimately adopted as agency decisions are deliberative, and thus exempt from disclosure. Fulbright & Jaworski v. Dept of the Treasury, 545 F. Supp. 615, 621 (D.D.C. 1982).

In addition, Exemption (b)(6) 5 U.S.C. § 552(b)(6) requires the withholding of information in "personnel or medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Personal email addresses and direct phone numbers of members of the public were redacted and/or withheld.

In assessing the releasability of personal information, agencies are required to balance the privacy interests of affected individuals against the public interest in disclosure. Individuals have an expectation of privacy when it involves divulging personal information. The FOIA request alleges no public interest in this information, nor is one obvious. Since there is no overriding public interest in the information regarding the personal information, the balance tips in favor of nondisclosure. Accordingly, all information regarding the personal information is withheld and/or redacted pursuant to Exemption (b)(6).

The withholding of information pursuant to Exemptions (b)(5) and (b)(6) of the FOIA constitutes a partial denial of your request for records under the FOIA. The undersigned is the denying official. You have the right to appeal this initial decision to the General Counsel, United States Patent and Trademark Office, P.O Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 30 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,

Dahlia George
FOIA Officer